

REMARKS

Claims 1-31 are pending in this application. Non-elected claims 10-31 have been withdrawn from consideration by the Examiner. By this Amendment, Figure 1 and claims 1, 2, 7, 9, 10, 12, 15, 17, 18, and 22-31 are amended. Support for the amendments to the drawings and claims may be found, for example, in the originally filed specification and claims. No new matter is added.

If this response does not result in a Notice of Allowance, but instead results in another Office Action, the amendments to the claims, particularly the amendments to the preamble and the amendments changing "comprising at least 15" to "consisting of 15 to 100," should not be considered to change the scope of the claims and, as such, a Final Rejection necessitated by the claim amendments would be improper. The preamble does not change the scope of the claims because the steps are not modified and the claims were interpreted only on the basis of the recited steps. See Office Action at page 5: Claim Interpretation. "Consisting of 15 to 100" does not change the scope of the claims because the specification defines "detection probe" and "amplification primer" on page 5, 12, and 13 as a sequence of 10 to 100 or 15-35 nucleotide motifs. Because the claims should be read in light of the specification, none of the above limitations is new. Instead, the definitions and features within the specification that are tied to the terms used in the claims are added to the claims to clarify the claims.

In view of the foregoing amendments and following remarks, Applicants respectfully request reconsideration and allowance.

I. Personal Interview

The courtesies extended to Applicants' representative by Examiner Pande at the interview held November 4, 2009, are appreciated. The reasons presented at the interview as

warranting favorable action are incorporated into the remarks below, which constitute Applicants' record of the interview.

II. Elections and Restriction

The Office Action asserts that Groups I and II do not relate to a single general inventive concept because they lack the same of corresponding special technical features. Specifically, the Office Action asserts that King et al., Amplification of a Novel v-erbB-Related Gene in a Human Mammary Carcinoma, 229:4717 Science 974-976 (1985) ("King") teaches a detection probe comprising at least 15 nucleotide motifs of SEQ ID NO:7. Without conceding the propriety of the restriction requirement, the pertinent claims are amended to recite "consisting of 15 to 100 nucleotide" instead of "comprising 15 nucleotide motifs." Accordingly, King is no longer applicable to the present claims.

Thus, Applicants respectfully request withdrawal of the Restriction and Election of Species Requirement.

III. Corrected Drawings

The Office Action requires new corrected drawings because Figure 1 is labeled in French. The attached replacement drawing sheet adds English labels to Figure 1 and replaces the original sheet with Figure 1. Accordingly, Applicants respectfully request reconsideration of the drawings.

IV. Rejection under 35 U.S.C. §112, Second Paragraph

The Office Action rejects claims 1-9 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As discussed during the interview, the pertinent claims are amended in light of the Examiner's helpful comments. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

V. Rejection Under 35 U.S.C. §102

The Office Action rejects claims 1-3, 5, and 7 under 35 U.S.C. §102(b) over U.S. Patent No. 7,285,382 to de Sauvage et al. ("de Sauvage"). Applicants respectfully traverse the rejection.

De Sauvage does not teach an "amplification primer consisting of 15 to 100 nucleotide motifs of a nucleotide sequence selected from SEQ ID No. 1 to SEQ ID No. 20" or a "detection probe consisting of 15 to 100 nucleotide motifs of a nucleotide sequence selected from SEQ ID No. 1 to SEQ ID No. 20" as recited in claim 1. Instead, SEQ ID NO:15 of de Sauvage have 620 nucleotides.

De Sauvage does not anticipate claim 1. Claims 2, 5, 5, and 7 depend from claim 1 and, thus, also are not anticipated by de Sauvage. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

VI. Rejections Under 35 U.S.C. §103

The Office Action rejects claims 8 and 9 under 35 U.S.C. §103(a) over de Sauvage as applied to claim 7 in view of Spik et al., A Novel Secreted Cyclophilin-like Protein (SCYLP), 266:17 J. of Biological Chem. 10735-10738 (1991) ("Spik"). The Office Action also rejects claims 4 and 6 under 35 U.S.C. §103(a) over de Sauvage as applied to claim 1 in view of Konigshoff et al., HER-2/neu Gene Copy Number Quantified by Real-Time PCR: Comparison of Gene Amplicataion, Heterozygosity, and Immunohistochemical Status in Breast Cancer Tissue, 49:2 Clinical Chem. 219-229 (2003) ("Konigshoff"). Because these rejections are related, they are addressed together. Applicants respectfully traverse the rejections.

The deficiencies of de Sauvage with respect to claim 1 are discussed above. Spik and Konigshoff do not, nor are they asserted to, cure the deficiencies of de Sauvage with respect

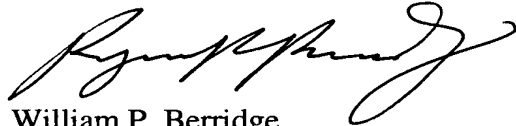
to claim 1. As such, claim 1 would not have been rendered obvious by the applied reference combinations. Claims 4, 6, 8, and 9 variously depend from claim 1 and, thus, also would not have been rendered obvious by the applied reference combinations. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections.

VII. Conclusion

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Applicants earnestly solicit favorable reconsideration and prompt allowance of the application.

Should the Examiner believe that anything further would be desirable to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Ryan R. Brady
Registration No. 62,746

WPB:RRB/rrb

Attachment:
Replacement Sheet

Date: November 12, 2009

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
